

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3451

United States of America,

Appellee,

v.

Tony Duane Munson, also known as
Anthony D. Munson,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: April 29, 2003
Filed: May 1, 2003

Before LOKEN, Chief Judge, BOWMAN and MELLOY, Circuit Judges.

PER CURIAM.

Tony Duane Munson pleaded guilty to possessing with intent to distribute fifty grams or more of a mixture containing methamphetamine. At sentencing, the District Court¹ denied Munson's motion under U.S.S.G. § 4A1.3 (2001) for a downward departure and sentenced him to seventy months of imprisonment and five years of supervised release.

¹The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

On appeal, Munson's counsel filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967), arguing that the District Court abused its discretion in denying Munson's departure motion. Counsel's argument is unreviewable, however, because the sentencing transcript shows that the District Court's refusal to depart was an exercise of discretion. See United States v. Lopez-Arce, 267 F.3d 775, 783–84 (8th Cir. 2001). We have further reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), and have found no nonfrivolous issues.

Accordingly, we affirm. We now grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.